

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8123 OF 2019**

Vishwas Haridas Jadhavar

Age- 40 years, Occu:- Service,
R/o-Dr. Arun Morale, Plot No. 29
Manisha Colony, Subhash Nagar,
Kolhapur.

... Petitioner

Versus

1. The Union of India
Through its Chief Secretary,
Ministry of Personnel and Training,
New Delhi.
2. The Secretary,
Department of Disabilities,
The Ministry of Social Justice,
and Empowerment, Mantralaya.
3. The Union Public Service
Commission,
through its Chairman, New Delhi.

... Respondents

Mr Sanjeev Kadam, Senior Advocate *with Mr Prashant Raul
with Ms Varsha MrThorat with Mr Suraj Mhadgut with
Mr Harsh Khot, i/b Ms Veera Shinde, for Petitioner.*

Ms Anamika Malhotra *with Mr Mainak Adhikary, for
Respondent Nos. 1 and 2.*

**CORAM : M.S. Sonak &
Jitendra Jain, JJ.**

**AMOL
PREMNATH
JADHAV**

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RESERVED ON : 12 JUNE 2025
PRONOUNCED ON : 16 JUNE 2025

JUDGMENT : *(Per M. S. Sonak, J.)*

1. Heard learned Counsel for the parties.
2. Orders were made for the disposal of this Petition finally at the admission stage. Accordingly, we issue Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioner has pleaded that he is afflicted by obsessive-compulsive disorder (OCD), which is considered a mental disability within the meaning assigned to this term under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 (2016 Act).
4. Between 2006 and 2008, the Union Public Service Commission (UPSC) initiated the process for appointing candidates to the Civil Services, including the IAS, IPS, and other services. It is the Petitioner's case that upon a literal interpretation or rather misinterpretation of the provisions of Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1995 Act). Reservations for persons with disabilities were provided only for 3% of the posts. Further, the posts identified were only those suffering from (i) Blindness or low vision; (ii) hearing impairment; (iii) Locomotor Disability or Cerebral Palsy. No posts were identified for those suffering from any mental illnesses.

5. The Petitioner has pleaded that even though he suffered from mental illness, he could not apply to the posts reserved for persons with disabilities in this selection process. Therefore, the Petitioner applied to be considered against the posts reserved for the OBC category.

6. In the examination held in 2008, the Petitioner secured 1110 out of 2300 marks. Despite such marks, the Petitioner could not get a position in the OBC category. The Petitioner has pleaded that the last candidate selected in the category reserved for persons with disabilities had secured only 991 marks out of 2300. The Petitioner's case, therefore, was that if posts were to be identified and reserved for those suffering mental illness, then the Petitioner, who had secured 1110 marks out 2300 would have certainly secured a position in the civil services in the year 2008 itself.

7. The Petitioner, arguing that the definition of “person with disability” includes a person suffering from mental illness instituted Writ Petition No. 447 of 2013 in the Delhi High Court, inter alia challenging Section 33 of the 1995 Act to the extent it suggested reservation of posts for only those suffering from blindness or low vision, hearing impairment and locomotor disability or cerebral palsy. The Petitioner contended that the exclusion of those suffering from mental illness rendered Section 33 of the 1995 Act arbitrary and unconstitutional due to vice of under inclusiveness.

8. By judgment and order dated 28 January 2013, the learned Single Judge of the Delhi High Court dismissed the Petition. The Petitioner then instituted the Letter Patent Appeal No. 222 of 2013 before the Division Bench. This was disposed of in 2017. No relief as such was granted to the Petitioner. Still, some recommendations were made to act in the light of observations in paragraphs 28 to 30 of the Division Bench's judgment and order dated 27 October 2016.

9. The Division Bench of the Delhi High Court in its Judgment and Order dated 27 October 2016 observed that though it found the Petitioner's grievances, to an extent, to be justified, the remedy lies in amending the law. The Division Bench therefore commended the Respondents to take some action towards a proper evaluation of the matter in the light of the observations made in paragraph Nos. 28 to 30 of the Judgment and order dated 27 October 2016.

10. The Petitioner instituted a Review Petition before the Division Bench, which was dismissed by order dated 10 March 2017. The Petitioner did not carry the matter any further before the Hon'ble Supreme Court.

11. However, during the pendency of the Review Petition, the 2016 Act came into force.

12. Section 33 of the 2016 Act provides that

"The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in

respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

13. Similarly, Section 34 of the 2016 Act provides:

(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.”

14. Section 34(2) provides for the carrying forward of reserved vacancies, and Section 34(3) provides for the

relaxation of the upper age limit for the employment of persons with benchmark disability, as the appropriate government may deem fit.

15. Thus, the Petitioner's grievance about the exclusion of those suffering from mental illness, when it came to the reservation of posts in government service, was legislatively redressed. As noted above, Section 34(1)(d) clearly refers to persons suffering from autism, intellectual disability, specific learning disability and mental illness.

16. One of the reliefs prayed for by the Petitioner in the present Petition (prayer clause D) reads as follows:

“D. To direct the respondents to identify the posts of All India Services (AIS) for the persons with disabilities provided under Section 34(1)(d) of the Right of Persons with Disabilities Act, 2016 within a period of four weeks by issuing a writ of mandamus, or any other appropriate writ, order or directions as the case may be;”

17. Mr Kadam, the learned Senior Advocate for the Petitioner, on instructions from the Petitioner, who was present in the Court, stated that the relief in terms of the prayer clause ‘D’ above stands granted, and therefore, the Petitioner has no surviving grievance in this regard. Accordingly, there was no question of delving into the issues of the Expert Committee's constitution or its recommendations. Mr Kadam submitted that the Expert Committee report had indeed recommended reservations in the Civil Services for persons with mental disabilities.

18. Ms Anamika Malhotra, the learned Counsel for the Respondents 1 and 2, joined issue in the context of Mr Kadam's statements concerning prayer clause 'D'. However, now that the Petitioner has expressed satisfaction regarding this relief, there is no point in revisiting this issue or issuing any further orders on it. Therefore, we only record that the Petitioner has no subsisting grievance regarding prayer clause 'D' and leave the matter at that.

19. Based on the changed legal position under the 2016 Act and the expert committee reports, the Petitioner represented to the Respondents that he should be appointed to the Civil Services based upon his performance in the 2006–2008 selection process. He pointed out that in the 2008 examination, he had secured 1110 out of 2300 marks, whereas the last candidate selected for the reserved post of persons with disabilities had secured only 991 marks out of 2300. He submitted that in 2008, based upon a literal interpretation or misinterpretation of the 1995 Act, the Petitioner was deprived the benefit of reservation even though, there was no dispute that the Petitioner was suffering from mental illness. He submitted that if posts were to be identified for persons with mental illness in the 2006-2008 selection process, then, the Petitioner would certainly have been selected to the Civil Services. He urged that his non-selection was therefore arbitrary, and given this, the Petitioner should be appointed to the Civil Services based on his performance in the 2008 examination.

20. By communications dated July 5, 2018, and February 27, 2019, the Petitioner's representations were rejected. The Petitioner was informed that no changes could now be made to the selection process that had concluded in 2008.

21. Aggrieved, the Petitioner, on 01 April 2019, instituted the present Petition seeking the following reliefs: -

“A. To quash the letter dated 27.02.2019 issued by the Director, Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities, New Delhi (Exhibit R), by issuing a writ of certiorari or any other appropriate writ, order or direction as the case may be;

B. To quash the impugned communication dated 05.07.2018 informing the petitioner that the benefit of disability i.e. mental illness could not be provided to the petitioner as the Rights of Persons with Disabilities Act, 2016 has come into force on 19.04.2017 and is applicable for CSE-2018 onwards issued by the Minister of State, Personnel, Public Grievances and Pensions Department, Government of India (Exhibit “O”), by issuing a writ of certiorari or any other appropriate writ, order or direction, as the case may be;

C. To quash the communication refusing to recommend the candidature of the petitioner issued by the UPSC (Exhibit “S”) by issuing a writ of certiorari or any other appropriate writ, order of directions as the case may be;

D. To direct the respondents to identify the posts in All India Services (AIS) for the persons with disabilities provided under Section 34(1)(d) of the Right of Persons with Disabilities Act, 2016 within a period of four weeks by

issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be;

E. To direct the respondents to appoint the petitioner against any one of the posts under Civil Services Examination-2008 pursuant to his selection;

E1. To direct the Respondents to take necessary steps towards appointment of the Petitioner in Indian Administrative Services (IAS) based on notification dated 04.01.2021 issued by Ministry of Social Justice and Empowerment, Government of India, on the basis of Civil Services Examination 2008 and provide all consequential benefits (monetary and promotion) as the Petitioner is already working in Group 'C' under the Government of Maharashtra;

F To direct the respondents to grant deemed date of appointment, further promotion and all other consequential benefits by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be;

G. To grant any other relief to which the petitioner is entitled to.”

22. Mr Kadam, learned Senior Advocate submitted that the Petitioner was discriminated against during the 2006-2008 selections because no reserved posts were identified for persons with mental illness even though, the definition of persons with disabilities had clearly included persons with mental illness. He submitted that were this exercise to be carried out, the Petitioner, on account of the marks secured by him in the 2008 examination, would certainly have been appointed to the Civil Services. Mr Kadam submitted that

after the 2016 Act entered force, this anomaly was removed. Accordingly, Mr Kadam submitted that the Petitioner, based upon the marks secured by him in the 2008 examination should be appointed to the Civil Service cadre so that the injustice cause to the Petitioner is suitably redressed.

23. Mr Kadam relied on decision of Delhi High Court in **Bhavya Nain Vs. High Court of Delhi**¹ and decision of Karnataka High Court in **Union of India Vs. Shri Yashwant Kumar & ors.**². He submitted that both these decisions support the case of the Petitioner and based upon these decisions, the reliefs as prayed for by the Petitioner may be granted.

24. Ms Anamika Malhotra submitted that this Petition is barred by delay and laches. In any event, she submitted that any grievances regard 2006-2008 selections stood concluded after the Delhi High Court dismissed the Petitioner's Writ Petition (C) No.447 of 2013 and the Division Bench dismissed LPA No.222 of 2013. She pointed out that even the Review Petitions were denied on 10 March 2017. Accordingly, she submitted that the present Petition seeking to raise issues concerning the selection process of 2006-2008 was barred.

25. Ms Malhotra submitted that there was no infirmity in the 2006-2008 selection process because at that time there was no question of reservation of posts for persons suffering from mental illness. She submitted that such provision was made only by the 2016 Act and such provision would,

¹ W.P. (C) 5948 of 2019 decided on 08/05/2020

² W.P. No.44696 of 2014 decided on 27/10/2014

therefore, never apply to the selection processes that were validly held and concluded before 2016.

26. Ms Malhotra submitted that a grant of any reliefs to the Petitioner against his performance at the 2008 examination would be impossible, given the selection process for appointments to the civil services. She submitted that several other candidates with mental illness were also not notified that their candidatures would be considered against the reserved posts at the 2006-2008 selections. This was because at that time, it was not even permissible to consider their candidatures given the provisions of Section 33 of the 1995 Act.

27. Ms Malhotra, therefore, submitted that no reliefs may be granted to the Petitioner in this Petition.

28. The rival contentions now fall for our determination.

29. The Petitioner's grievance in this Petition, which was instituted on 01 April 2019, relates mainly to the selection process of 2006-2008 for the civil services. This selection process concluded in 2008, and the petition was instituted only on 1 April 2019.

30. However, before the institution of this Petition, the Petitioner did institute Writ Petition No.447 of 2013 before the Delhi High Court, challenging *inter alia* Section 33 of the 1995 Act because this Section, at least on the face of it, excluded reservations for persons suffering from mental illness. Although full details of the Petition are not included

with this Petition, the challenge pertains to the 2006-2008 selections. In all probability, the relief sought by the Petitioner was to direct his selection based on the marks obtained by him in the 2008 examination.

31. Writ Petition No. 447 of 2013 was rejected by the learned Single Judge of the Delhi High Court on January 28, 2013. Therefore, the Petitioner instituted LPA No.222 of 2013 before the Division Bench. By a detailed judgment and order dated 27 October 2016, the Division Bench declined to grant any substantive reliefs to the Petitioner either by way of striking down Section 33 of the 1995 Act or by directing the Petitioner's selection to the civil services based upon the 2008 examination results. However, the Division Bench did observe that the Petitioner's grievances were, to an extent, justified. The Division Bench, however, held that the remedy lies in amending the law, rather than issuing any writ or judicial directives. Therefore, the Respondents were urged to take some legislative action in the light of the observations in paragraphs 28-30 of the judgment and order dated 27 October 2016.

32. The Petitioner instituted a Review Petition which the Division Bench also dismissed on 10 March 2017. In the Petitions before the Delhi High Court, the Petitioner had specifically raised the issue of lost opportunity by pointing out that between 2008 and now, the Petitioner had availed of 7 chances at the UPSC examinations. Even this grievance was

noted, but the Court expressed that it could not redress this grievance in the peculiar facts and circumstances of the case. The Court, in fact, observed that such a contention was meritless.

33. Thus, insofar as the selection process of 2006-2008 is concerned, all issues and grievances were addressed by the Delhi High Court. The Petitioner could obtain no relief in this regard. The legislature intervened through the 2016 Act. Based upon such intervention, it was not open for the Petitioner to institute the present Petition and again attempt to seek relief regarding the 2006-2008 selections through this Court. The principle of res judicata or constructive res judicata would surely apply to such a situation. Accordingly, we find ourselves unable to grant the Petitioner any relief regarding the 2006-2008 selection process in this Petition.

34. Apart from the proceedings before the Delhi High Court, even if we were to consider the Petitioner's case on merits, we find that no case is made out to grant the Petitioner relief based upon the marks secured by him in the 2008 examination. Considering the provisions of the 1995 Act, the Delhi High Court found no legal infirmity in the selection process in which no posts were reserved for persons suffering from mental disability. Though this position may have undergone the legislative change after the 2016 Act came into force, this Act, did not revive the earlier selection processes which were judicially examined and found to be legal and

proper. Therefore, due to the change in legal position brought about by the 2016 Act, there would be no scope to interfere with the concluded selection process of 2006-2008. Moreover, after the challenge to this selection process involving the non-selection of the Petitioner failed before the Delhi High Court, there is no scope to revisit this issue.

35. The grant of reliefs, as prayed for by the Petitioner in this Petition at this point in time, would lead to administrative chaos. Firstly, no posts were advertised for persons with mental illness. Secondly, at this point in time, to appoint any person against the selection process of 2006-2008 would give rise to several complications regarding seniority, induction, etc. Thirdly, once it was established that there was nothing wrong with the 2006-2008 selection process, the grant of such relief is also not warranted due to subsequent legislative changes. The impugned communications are justified in the light of the facts and circumstances of the present case. The Petitioner's case was fairly and sympathetically considered, but the authorities quite correctly found it difficult to grant the Petitioner relief that he was seeking at this point of time. No case is, therefore, made out to interfere with the impugned communications.

36. The relief in terms of the prayer clause E1 is also not available to the Petitioner now. There is no question of the Petitioner claiming the benefits of the Notification dated 04 January 2021 now. This is more so because the Petitioner has

admitted to having exhausted the maximum permissible chances to participate in the civil services examination. This grievance was squarely raised before the Delhi High Court but turned down. By ignoring all such statutory prescriptions and relying only upon the legislative changes or notification based upon such legislative changes, there is no question of the Petitioner claiming reliefs of appointment, promotions and all monetary benefits.

37. The Petitioner is already working in Group “C” under the Government of Maharashtra. The Petitioner’s zest in pursuing this matter before the Delhi High Court and this Court is to be appreciated. The legislative policy under the 1995 Act did not support reservations for those suffering from mental illness. The Petitioner, therefore, challenged the provisions of Section 33 of the 1995 Act; however, this challenge was unsuccessful. The Division Bench of the Delhi High Court also examined the grievance, but concluded that judicial redressal was not possible and that the law needed to be amended. A new law was in fact introduced in 2016 by which reservations had to be provided even for those suffering from mental illness. However, by this time, it was not possible to grant the Petitioner any benefits based upon the marks obtained by him in the 2006-2008 selection process.

38. The two decisions relied upon by Mr Kadam, in no manner, assist the case of the Petitioner. In Bhavya Nain (supra) the challenge was to the wrongful exclusion of the

Petitioner by observing that the Petitioner's disability was of a temporary nature. The Court determined that there was nothing temporary about the Petitioner's disability and granted him relief for the selection process of 2018. There was no question of granting any benefit for the 2006-2008 selection process or some past concluded selection processes based upon the changed legal position in 2016. Accordingly, the decision in **Bhavya Nain** (supra) can be of no assistance to the Petitioner.

39. Similarly, the decision in the case of **Yashwant Kumar** (supra) is also of no benefit to the Petitioner. That was a case where the Petitioner was granted benefits because it was found that he suffered from multiple disabilities which were ignored, even though there may have been some substance in the Respondents' contention about the Petitioner having no benchmark disability of 40% when it came to virtual impairment. Therefore, the facts in **Yashwant Kumar** (supra) are also not comparable to the facts of the present case.

40. For all the above reasons, whilst we appreciate the Petitioner's zest and crusade, we find ourselves unable to grant the Petitioner any relief in this Petition. The Rule is discharged, and the Petition is disposed of without a costs order.

(Jitendra Jain, J)

(M.S. Sonak, J)